vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3089 OF 2004
IN
SUIT NO.2124 OF 1998

M/s.Phulchand Exports Ltd. ... Plaintiffs

V/s.

M/s.Baggrya India Ltd. & Ors. ... Defendants

Mr.Mahesh Londhe for Plaintiffs
Mr.D.S. Chandnani for Defendants

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 8, 2006**

P.C.:

. The Defendants have taken out the present Motion for dismissal of the suit. The defendants contend that this Court has no territorial jurisdiction in respect of the cause of action on which basis the plaintiffs have filed the present suit. The plaintiffs have contended in the plaint that Defendant No.1 had confirmed the sale of 1000 metric tonnes of wheat flour to the Plaintiffs. The consignment was to be shipped at Kandla and it was agreed that the consignment of wheat flour would be supplied through Defendant No.2 at Ghaziabad and Defendant No.1 Baggrys India Limited, New Delhi. The plaintiffs contend that they were to supply the packing material for the purposes of the transportation of the wheat flour for export. The plaintiffs have supplied the packing material as agreed and have shown their readiness and willingness to perform their part of the

contract. The plaintiffs have, therefore, contended that the cause of action has arisen in Mumbai where the contract was entered into by the parties and therefore, the suit is maintainable before this Court. The defendant on the other hand, contends that in view of the provisions of section 19 of the Civil Procedure Code The suit has been filed for compensation for non-supply of the goods and such a suit can be filed either where the defendants reside or carry on business or within the local limits of the jurisdiction of the Court in which the work was carried out.

2. Reliance is placed on the judgment of the apex Court in the case of *National Textile Corporation Ltd. & Ors. v/s. M/s.Haribox Swalram & Ors.,* **AIR 2004 SC 1998** and *Saleem Bhai & Ors. v/s. State of Maharashtra,* **AIR 2003 SC 759** to submit that the cause of action as understood in the civil proceedings means every fact which, if traversed, it would be necessarily for the plaintiff to prove. The Supreme Court after considering section 19 of the Civil Procedure Code has held that merely because the writ petitioner in that case had carried on the business in Calcutta and the reply to the correspondence was received in that city, the integral part of the cause of action had not arisen in Calcutta and therefore, the Petition was dismissed. In the case of Saleem Bhai & Ors. v/s. State of Maharashtra (supra), the Apex Court has considered that the suit can be dismissed under Order 7 Rule 11 of the Civil

Procedure Code at any stage. Reliance is also placed on the judgment of the Supreme Court in the case of *Y.Abraham Ajith v/s. Inspector of Police,* **2004 AIR SCW 4788** to submit that the cause of action means a bundle of facts. In the present case, it is submitted that the cause of action would arise either in Kandla where the goods were being supplied for export or the suit would have to be tried in Delhi where the defendants carry on business.

3. The plaintiff has contended that the packing material was supplied by the plaintiffs to the Defendants from Mumbai. The defendants were to despatch the wheat flour to Kandla packed in this material. It is in these circumstances, according to the plaintiff, that a part of the cause of action has arisen in Mumbai and therefore, the suit is maintainable in Mumbai.

4. On a perusal of the documents on record, I find that the suit is based on a contract for purchase of the material which is annexed at Exhibit A1 to the plaint. The contract has admittedly been executed in Mumbai. The packaging material for the consignment has been despatched by the Plaintiffs from Mumbai. The defendants were to ensure that their invoice was sent to the Plaintiffs in Mumbai alongwith delivery challans signed by the Plaintiffs' representative. In my view, these factors indicate that a part of the cause of action has arisen in Mumbai and therefore, the Suit

would be maintainable. Motion is therefore dismissed.